

California Fair Political Practices Commission

MEMORANDUM

To: Chairman Randolph, Commissioners Blair, Downey, Karlan, and Knox

From: Natalie Bocanegra, Commission Staff Counsel
John Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Re: Registered Domestic Partners – Adoption of Proposed Regulation 18229

Date: November 22, 2004

I. Executive Summary

Effective January 1, 2005, Assembly Bill 205 (“AB 205”) will amend the law relating to domestic partnership. (Attachment 1.) The new law will amend the Family Code to provide that registered domestic partners have the same rights and obligations as spouses. (Stats. 2003, Ch. 421.)

In light of this recent legislation, David W. Roberts, a candidate for Solana Beach City Council, requested a Commission opinion regarding whether potential conflicts of interest would arise for him by virtue of his domestic partnership. On October 7, 2004, the Commission considered the issues raised by Mr. Roberts and ultimately adopted its opinion, *In the Matter of David W. Roberts*, 17 FPPC Ops. 9. The Commission concluded that the term “spouse” as used in determining an official’s economic interests for purposes of disqualification and disclosure, and for purposes of interpreting the Political Reform Act (the “Act”)¹ generally, includes a registered domestic partner as of January 1, 2005. In reaching its conclusion, the Commission reviewed its past application of family law concepts as guidance in interpreting provisions of the Act.

Pursuant to its authority of section 83112, under which it may adopt, amend, and rescind rules and regulations to carry out its purposes, the Commission now examines whether regulatory language should be adopted to codify its conclusion in the *Roberts* opinion. This regulatory language would codify the conclusions of the *Roberts* opinion. The two regulatory options presented to the Commission are:

Option 1: Option 1 is a short version of the proposed regulation which states that the registered domestic partner of an individual is deemed to be the spouse of the individual for purposes of the Act and implementing regulations. Optional language specifying that the regulation applies to a registered domestic partnership “recognized by state law” is also included.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

Option 2: Option 2 is a longer version of the proposed regulation. It also states that the registered domestic partner of an individual is deemed to be the spouse of the individual for purposes of the Act and implementing regulations. However, it additionally provides a non-exclusive list, which serves as examples of specific purposes for which a registered domestic partner is deemed to be a spouse. In particular, a registered domestic partner is deemed to be a spouse for purposes of determining whether:

- The domestic partner is a member of the individual's "immediate family."
- The individual has an interest in any business entity or real property of his or her registered domestic partner.
- The individual has a "community property interest in the income of a spouse."
- The individual has an economic interest in the personal finances of his or her registered domestic partner.

Again, optional language is included which specifies that registered domestic partnerships governed by this regulation are those recognized by state law.

Staff Recommendation: Although both versions have the same legal effect, staff recommends Option 1 since it avoids possible confusion as to whether the list of examples provided in Option 2 is an exclusive list. In addition, staff recommends inclusion of the bracketed language.

II. Assembly Bill 205 (Goldberg)

AB 205² extends the rights and duties of spouses to persons registered as domestic partners on and after January 1, 2005. Section 297(b) specifies when a domestic partnership shall be established in California.³

Section 297.5(a) of the bill further states:

"Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other

² This bill is known as "The California Domestic Partner Rights and Responsibilities Act of 2003."

³ Requirements specified in section 297(b) include the following: (1) Both persons must have a common residence; (2) Neither person is married to someone else or is a member of another domestic partnership; (3) The two persons are not related by blood in a way that would prevent them from being married to each other in California; (4) Both persons are members are at least 18 years of age; and (5) Either both persons are members of the same sex or one or both meet the eligibility criteria under certain sections of the federal Social Security Act.

provisions or sources of law, as are granted to and imposed upon spouses.” (Fam. Code section 297.5(a), as amended by Stats. 2003, Ch. 421.)

However, AB 205 does not expressly amend the term “spouse” for purposes of the Family Code. Specifically, this bill does not amend section 308.5 of the Family Code, which states that “[o]nly marriage between a man and a woman is valid or recognized in California.” (See Attachment 2.) Section 11 of the Family Code further states:

“A reference to ‘husband’ and ‘wife,’ ‘spouses,’ or ‘married persons,’ or a comparable term, includes persons who are lawfully married to each other and persons who were previously lawfully married to each other, as is appropriate under the circumstances of the particular case.” (See Attachment 3.)

This section was added by the legislature in 1992 in recasting a comprehensive scheme relating to family law, adoption procedures, and the prevention of domestic violence as the Family Code. (Digest, Stats. 1992, Ch. 162.)⁴

Further, AB 205 states that: “[t]his section does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative.” (Fam. Code section 297.5(j), as amended by Stats. 2003, Ch. 421.) Since the Act was enacted by initiative statute in 1974 as part of Proposition 9, staff does not view AB 205 as altering any provision of the Act. Moreover, the new law states that it:

“... does not preclude any state or local agency from exercising its regulatory authority to implement statutes providing rights to, or imposing responsibilities upon, domestic partners.” (Fam. Code section 297.5(i), as amended by Stats. 2003, Chapter 421.)

Finally, AB 205 recognizes a domestic partnership validly formed in another jurisdiction. Section 299.2 states that:

“a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined [by AB 205] shall be recognized as a valid domestic partnership in this state regardless of

⁴ Prior to this legislation, this scheme was established under various provisions of the Civil Code, Code of Civil Procedure, Evidence Code, and Probate Code, including the Family Law Act, the Uniform Parentage Law, the Domestic Violence Prevention Act, the Uniform Act on Blood Tests to Determine Paternity, the Revised Uniform Reciprocal Enforcement of Support Act of 1968, and the Family Conciliation Court Law. (*Ibid.*)

whether it bears the name domestic partnership.” (Fam. Code section 299.2, as amended by Stats. 2003, Chapter 421.)

III. The Commission’s *Roberts* Opinion

On April 22, 2004, David W. Roberts, a candidate for Solana Beach City Council, submitted a request for written advice concerning the possible implications of AB 205. Mr. Roberts sought advice as to whether potential conflicts of interest could arise for him by virtue of his domestic partnership if he were to be elected.⁵ On October 7, 2004, the Commission adopted an opinion on these issues.

In this opinion, the Commission concluded that the term “spouse,” as used in determining an official’s economic interests for purposes of disqualification and disclosure, and for purposes of interpreting the Act generally, includes a registered domestic partner as of January 1, 2005. (*Roberts, supra.*) According to the opinion, an official may have an economic interest arising from his or her registered domestic partnership at that time. (*Ibid.*)

In reaching its conclusions, the Commission reviewed its past application of family law concepts when analyzing community property issues. (*Ibid.*; see also *Morales* Advice Letter, No. A-99-246(a); *Hackard* Advice Letter, No. A-84-070; *In the Matter of Art Torres*, 2 FPPC Ops. 31.) In particular, the Commission considered that the family law “community property” rule had been applied by the Commission and its staff only in the context of a marital relationship. (*Ibid.*) For example, the *Moen* Advice Letter, No. A-01-078, cited Family Code section 299.5(d), which stated at the time that a domestic partnership did not create community property or quasi-community property. (AB 205, when in effect, will repeal Family Code section 299.5 and provide that registered domestic partners have the same rights and obligations as spouses under the law.)

Additionally, the Commission considered that it had, on occasion, departed from existing family law when making legal determinations for purposes of the Act. (*Torres, supra.*) In the *Torres* Opinion, the Commission analyzed, in part, whether wedding gifts addressed to and received by Assemblyman Torres’ wife prior to the marriage were her separate property and therefore not reportable by Assemblyman Torres. After examining applicable family law, the Commission in the *Torres* opinion had stated:

“Rather than depend on the theoretical nuances of community property law to determine ownership of wedding gifts, we believe that the interests of disclosure under the Political Reform Act can best be served by adopting a test similar to that set forth in *Avnet*. Regardless of whether or not the gift is received by the bride prior to the marriage, wedding gifts benefit both spouses and should be subject to disclosure unless peculiarly adaptable to the personal use of one spouse or specifically intended for the use of one spouse. Accordingly, Assemblyman Torres should disclose

⁵ Mr. Roberts was elected to the city council in November 2004.

receipt of wedding gifts according to the guidelines which we set forth in this opinion.”

With consideration given to these various factors, the majority opinion in *Roberts, supra*, ultimately determined that the term “spouse” includes a registered domestic partner as of January 1, 2005, for purposes of the Act. However, the majority opinion noted that its conclusion is limited to the provisions of the Act and does not create a marriage nor confer the status of being married upon any person. (*Roberts, supra*.)

In comparison, while agreeing with the main conclusion of the majority, the dissenting opinion disagreed with respect to the means of addressing the issues related to domestic partnerships and, instead, stated a preference for proceeding by regulation in order to provide additional notice to the regulated community. (*Roberts, supra*.)

IV. Use of the Term “Spouse” within the Act

The Commission’s conclusion in the *Roberts* opinion will impact the duties of a public official with a registered domestic partner where the term “spouse” appears in a particular section. In addition, this will be the case where the term “immediate family” appears because “immediate family” means a spouse and dependent children. (Section 82029.) Finally, the opinion will also affect interpretation of the provisions containing the term “household” which is defined as a “candidate’s or elected officer’s spouse, dependent children, and parents who reside with the candidate or elected officer.” (Section 89511(b).)

Table A and Table B illustrate where the terms “spouse” and “immediate family” are included in sections of the Act. The sections containing the term “household” are also noted.

Table A Sections Containing the Term “Spouse”		
Section	Title	Area of Act
82028	Gift	Definitions (gift exclusion)
82029	Immediate Family	Definitions
82030	Income	Definitions
82030.5	Earned Income	Definitions (earned income exclusion)
84211	Contents of Campaign Statement	Campaign Disclosure
87103	Financial Interest	Conflict of Interest (Disqualification)
87460	Loans to Public Officials	Conflict of Interest (Loans)
87461	Loan Terms	Conflict of Interest (Loans)
89511	Campaign Funds Held by Candidates and Committees	Campaign Funds (also includes “household”)

Table B Sections Containing the Term “Immediate Family”		
Section	Title	Area of Act
82045	Payment to Influence Legislative or Administrative Action	Definitions
84219	Slate Mailer Organization; Semi-Annual Statements	Campaign Disclosure
86111	Activity Expense; Agency Official	Lobbying
87450	Restrictions in Participation of State Officers in Decisions Relating to Contracts	Conflict of Interest (State Contracts)
89513	Use of Campaign Funds for Specific Activities	Campaign Funds (also includes “household”)
89515	Use of Campaign Funds for Donations and Loans	Campaign Funds
89516	Use of Campaign Funds for Vehicle Expenses	Campaign Funds
89517	Use of Campaign Funds for Real Property, Appliances or Equipment	Campaign Funds
89519	Use of Surplus Campaign Funds	Campaign Funds

V. Current Rules Involving “Spouse,” “Immediate Family,” or “Household”

The terms “spouse,” “immediate family,” or “household” are found in the Act’s definitional, disqualification, disclosure, campaign, lobbying, and specialized conflict-of interest provisions, discussed below. While interpreting the term “spouse” to include a registered domestic partner will clearly impact a variety of provisions of the Act, it should be noted that an important reason for codifying the *Roberts* opinion is to apply this interpretation to the Act as a whole, including implementing regulations, so that in every instance where the term “spouse” appears members of the public will know that a similar analysis will apply to a registered domestic partner.

A. Definitional Provisions

The terms “gift,” “immediate family,” “income,” “earned income,” and “payment to influence legislative or administrative action” are definitions set forth in Chapter 2 (the “definitions” chapter) which govern the interpretation of the Act. (Section 82000.) Consequently, unlike other provisions containing “spouse” which apply only to certain discrete areas of the Act, these definitions apply to the entire Act, absent a specific provision which would limit their application.

B. Disqualification and Disclosure

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision within the meaning of the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official’s economic interests. (Section 87103; regulation 18700(a).) The Commission has adopted a standard eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1) - (8).) Section 87103 identifies economic interests as defined in the Act, including those arising from a spousal relationship:

- ***Business Entity and Real Property:*** A public official has an economic interest in a business entity in which he or she has an indirect investment. (Section 87103(a); regulation 18703.1(a).) A public official also has an economic interest in real property in which he or she has an indirect interest worth \$2,000 or more. (Section 87103(b); regulation 18703.2.)

An indirect investment or interest includes any investment or interest owned by the spouse of an official or by a member of the official’s immediate family, or by a business entity or trust in which the official, the official’s immediate family, or their agents own directly, indirectly, or beneficially a 10% interest or greater. (Section 87103.) Therefore, economic interests triggering a public official’s disqualification currently include investments and real property of a public official’s spouse in addition to any business entity or real property owned by a business in which a spouse has a 10% or greater interest. (*Esselstein* Advice Letter, No. I-03-293; Section 87103.)

- ***Income:*** A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (section 87103(c); regulation 18703.3).

Section 82030 defines “income” to include “any community property interest in the income of a spouse.” In addition, the definition of income in section 82030 provides that income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly or indirectly or beneficially, a 10% interest or greater. (Section 82030.) Therefore, not only is a spouse’s income a potentially disqualifying economic interest of a public official, but clients of a spouse’s business can be potential sources of disqualification where a spouse owns a 10% or greater interest in the business. (*Stone* Advice Letter, No. I-01-014; *Martin* Advice Letter, No. I-99-144.)

- **Gifts:** A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$340⁶ or more within 12 months prior to the decision (section 87103(e); regulation 18703.4).

Excepted from the definition of “gift” are gifts from certain specified relatives. (Section 82028(b)(3).) Also included in this exception are gifts from a spouse’s children, parents, brothers and sisters. While the Act does provide an express exception to the definition of “gift” for gifts from spouses, historically gifts from domestic partners have also been exempt as gifts exchanged in a “bona fide dating relationship.” (*Grigg* Advice Letter, No. I-02-184; *Albuquerque* Advice Letter, No. A-00-120.)

- **Personal Financial Effect:** A public official has an economic interest in his or her personal finances, including those of his or her immediate family -- this is the “personal financial effects” rule (section 87103; regulation 18703.5).

Unless an exception applies a public official’s community property interest in his or her spouse’s income is reportable, as well as a spouse’s ownership interest in real property and investments held by the spouse or a business owned by the spouse’s interest. The specific reporting requirements are provided by sections 87206 and 87207. (Also see sections 82029, 82030, 82033, and 82034.)

C. Campaign Provisions

The campaign sections noted in Table A and Table B include both “Campaign Disclosure” (Chapter 4, Articles 1 – 5) and “Campaign Funds” (Chapter 9.5, Article 4) provisions, more commonly referred to as the “personal use” provisions.

Sections 84211 and 84219, both disclosure statutes, require reporting of information pertaining to transactions from which either a spouse or immediate family member financially benefited, even if in an “indirect” manner. For example, subdivision (r) of section 84211 requires that, when a business is reported as the recipient of an expenditure of \$100 or more, there be additional reporting if the candidate’s spouse owns 50% or more of the business.⁷ (Sections 84211(k) and (r).) Subdivision (s) of this section imposes the same requirements with regard to a business where the candidate’s spouse is an officer, partner, consultant, or employee of the business.

The personal use provisions provide rules as to how campaign funds may be spent. In general, the sections cited in Table A and Table B prohibit or otherwise regulate expenditures benefiting a spouse or other immediate family member.⁸ Some of

⁶ This figure will be adjusted on January 1, 2005.

⁷ Section 84211(r) is specifically triggered when the business is owned by “a candidate or person controlling the committee, by an officer or employee of the committee, or by a spouse of any of these individuals.”

⁸ Section 89513 also includes the term “household.” “Household” includes the candidate’s or elected officer’s spouse, dependent children, and parents who reside with the candidate or elected officer. (Section 89511.)

these expenditures include payments for travel expenses, health-related expenses, tickets for entertainment or sporting events, donations or loans to nonprofit organizations, vehicle expenses, and real property leases.

D. Lobbying Provisions

The lobbyist provisions of the Act, provided at Chapter 6, regulate lobbying activity and include registration and reporting rules along with certain prohibitions. (Sections 86100 et seq.) The disclosure of “activity expenses” is one important function of the reporting rules. Section 86111 defines this term as follows:

“(a) ‘Activity expense’ as used in this chapter means any expense incurred or payment made by a lobbyist, lobbying firm, lobbyist employer or a person described in subdivision (b) of Section 86115, or arranged by a lobbyist or lobbying firm, which benefits in whole or in part any elective state official, legislative official, agency official, state candidate, or a member of the *immediate family* of one of these individuals. Activity expenses include gifts, honoraria, consulting fees, salaries, and any other form of compensation but do not include campaign contributions.”
(Emphasis added.)

As a result, an expense as described in this definition includes one which benefits the spouse of an elective state official, legislative official, agency official, or state candidate.

E. Specialized Conflict-of-interest Rules

Loans: Sections 87460 and 87461 prohibit the receipt of a personal loan to an elected officer of a state or local government agency from certain persons working for the agency or where the loan is not in writing which clearly states the terms of the loan and other specified information. Excluded from this prohibition are loans from a list of relatives including the officer’s spouse.

State Contracts: Section 87450 prohibits a state administrative official from making, participating in making, or influencing a governmental decision directly relating to any contract where the official knows (or has reason to know) that any party to the contract is a person with whom the official has engaged in certain business transactions worth \$1,000. This prohibition also applies where a party to the contract is a person with whom a member of the official’s immediate family has engaged in business transactions as described.

VI. Effect of the *Roberts* Opinion

Under the Commission’s interpretation in the *Roberts* opinion, a registered domestic partner will be included wherever the term “spouse” appears or wherever the terms “immediate family” or “household” appears since these terms, in turn, also both

include a spouse. The following discussion briefly summarizes the resulting changes that would be clarified if the *Roberts* opinion is codified.

A. Definitional Sections

As mentioned, the terms “gift,” “immediate family,” “income,” “earned income,” and “payment to influence legislative or administrative action” generally apply for purposes of the entire Act. Where these definitions contain rules which currently apply to a spouse, the rules will also apply to registered domestic partners and be incorporated in any other section utilizing these terms when AB 205 goes into effect.

For example, a “payment to influence legislative or administrative action” is defined, in part, as a “payment which directly or indirectly benefits any elective state official, legislative official or agency official or a member of the immediate family of any such official.” (Section 82045(c).) Section 86116, a lobbying provision, requires the reporting of “payments to influence legislative or administrative action.” Applying the Commission’s interpretation in the *Roberts* opinion, the lobbying rules will require the disclosure of payments which directly or indirectly benefit the registered domestic partner of an elective state official, legislative official or agency official as contemplated by section 86116 as of January 1, 2005.

B. Disqualification and Disclosure

The decision to interpret “spouse” to include a domestic partner affects staff’s analysis of whether an economic interest arising from a domestic partnership will trigger disqualification and/or reporting.

- ***Business Entity and Real Property:*** As discussed above, section 82034, defining “spouse,” does not currently include a registered domestic partner so the existing rule is that a public official in a registered domestic partnership does not have an economic interest in the investments of his or her domestic partner. However, under the *Roberts* opinion, “spouse” (and therefore “immediate family”) will include a registered domestic partner when AB 205 is in effect so that a public official in a domestic partnership would then have an economic interest in any investment of his or her domestic partner.

Similarly, a public official does not currently have an economic interest in real property held by his or her domestic partner. However, pursuant to the interpretation of the term “spouse” (and “immediate family”) in the *Roberts* opinion, the public official will also have an economic interest in any real property owned by his or her registered domestic partner.

- ***Income:*** At present, the Act does not make reference to any “community property” interest in the income of a “domestic partner.” Therefore, a domestic partner’s income is not currently an economic interest to a public official. For example, if a domestic partner receives income from a business that appears

before the public official, that business is not a disqualifying source of income to the official. Ordinarily, a spouse's income of \$1,000 or more is disqualifying because we consider half of that income to be attributable to the public official.

One issue which was addressed by the *Roberts* opinion is whether a public official should be deemed to have an economic interest in income that is most likely deemed "community property" under the new domestic partner law. (See sections 299(a)(6) - (7) of the Family Code as amended by Chapter 421, Stats. 2003, for reference to "community property.") The Commission determined that a public official will have such an economic interest as of January 1, 2005.

- **Gifts:** Because gifts from domestic partners historically have been exempt as gifts exchanged in a "bona fide dating relationship," there would be no significant change in the rules regarding a gift from a domestic partner.

However, it should be noted that any exception based on a spousal relationship would seem to logically extend to a domestic partnership beginning January 2005. For example, section 82028(b)(3) excludes from its definition:

"Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person..."

Therefore, it appears that a gift from the domestic partner of a child or any of the other listed relatives would be excluded from the definition of "gift." Also included in this exception would be gifts from a domestic partner's children, parents, brothers and sisters. The exception of section 82028(b)(3) does not apply if the donor of the gift is acting as an agent or intermediary for the true donor.

- **Personal Financial Effect:** Finally, under the "personal financial effects" rule, a public official currently does not have an economic interest in his or her domestic partner's personal expenses, income, assets, or liabilities except to the extent that a personal financial effect on his or her domestic partner possibly translates into a material personal financial effect on the official due to other financial arrangements.

In contrast, when "spouse" and "immediate family" are interpreted to include a domestic partner, a public official with a domestic partner would always have an economic interest in the personal expenses, income, assets, or liabilities of that partner.

C. Campaign Provisions

Applying the *Roberts* opinion with regard to campaign reporting rules will require the reporting of information pertaining to transactions from which a registered domestic partner has financially benefited. In addition, personal use of campaign funds provisions pertaining to payments for travel expenses, health-related expenses, tickets for entertainment or sporting events, and the like will apply where expenditures benefit a registered domestic partner.

D. Lobbying Provisions

Currently, an expense which benefits the spouse of an elective state official, legislative official, agency official or state candidate is an activity expense that must be reported. Beginning January 2005, an expense which benefits the registered domestic partner of an elective state official, legislative official, agency official or state candidate will also be an activity expense subject to the Act's lobbying rules.

E. Specialized Conflict-of-interest Rules

Loans: A loan from a domestic partner will be excluded from loan prohibitions of Sections 87460 and 87461 beginning January 2005.

State Contracts: The prohibition of Section 87450 against participating in a governmental decision directly relating to certain contracts will apply where an official's registered domestic partner has engaged in specified business transactions with a party to the contract as described in this section.

VII. Proposed Regulation 18229

The regulatory language submitted to the Commission would codify the conclusions of the *Roberts* opinion. The two regulatory options are:

Option 1: Option 1 is a short version of the proposed regulation 18229 which states that the registered domestic partner of an individual is deemed to be the spouse of the individual for purposes of the Act and implementing regulations.

Option 2: Option 2 is a longer version of the proposed regulation. It also states that the registered domestic partner of an individual is deemed to be the spouse of the individual for purposes of the Act and implementing regulations. However, it also provides a non-exclusive list which has examples of when a registered domestic partner is deemed to be a spouse. For example, a registered domestic partner is deemed to be a spouse for purposes of determining whether:

- the domestic partner is a member of the individual's "immediate family."
- the individual has an interest in any business entity or real property of his or her registered domestic partner.

- the individual has a “community property interest in the income of a spouse.”
- the individual has an economic interest in the personal finances of his or her registered domestic partner.

Both options have bracketed language specifying that the regulation applies to a registered domestic partnership “recognized by state law.” This bracketed language is intended to limit the regulation’s application to those registered domestic partnerships, as defined in section 297(b) (see footnote 3), and which are validly formed in other jurisdictions as specified in section 299.2 (discussed above). If the bracketed language is not included, the regulation could apply to registered domestic partnerships, whether or not they are validly formed under AB 205 or in another jurisdiction. If the Commission thinks “recognized by state law” is too broad, the phrase “that meets the requirements of Family Law Code sections 297(b) and 299.2 could be inserted instead.”⁹ However, staff believes it is not desirable to reference the specific Family Code sections, as the code sections may change. Moreover, if AB 205 were not to survive judicial scrutiny, citation to specific Family Code sections could require amendment of the regulation if the Commission wished to continue to apply the general concepts discussed above to registered domestic partners.

Staff Recommendation: Although both versions have the same legal effect, staff recommends Option 1, the shorter version, since it avoids possible confusion as to whether the list of examples provided in Option 2 is an exclusive list. In addition, staff recommends inclusion of the bracketed language which limits the regulation’s application to registered domestic partnerships recognized by state law.

Attachments

Attachment 1 - Assembly Bill 205

Attachment 2 - Family Code sections 300 – 310

Attachment 3 - Family Code sections 1 – 13

Attachment 4 - Proposed Regulation 18229, Option 1 & Option 2

⁹ The bracketed language in the version of the regulation noticed through the Office of Administrative Law is as follows, “that meets the requirements of Family Code section 297(b).” Reference to Family Code section 299.2 would be added.